

**Town of Bethany Beach  
Planning Commission Minutes  
April 19, 2008**

The Bethany Beach Planning Commission held a meeting on Saturday, April 19, 2008 in the Bethany Beach Town Hall, 214 Garfield Parkway, Bethany Beach, DE 19930.

The following members were present: Lew Killmer, who presided; Donald Doyle, Fulton Loppatto, Faith Denault. Tony McClenny and Kathleen Mink were officially excused from this meeting.

Also present: Councilman Jerry Dorfman, Councilman Steve Wode, Councilman Joseph Healy, John Eckrich, Building Inspector, Seville Pettit, Administrative Secretary, Patricia Titus of Coastal Point and interested members of the public.

The meeting was called to order at 9:03 a.m.

**OPENING OF MEETING**

***Approval of Agenda***

Mr. Doyle made a motion to approve the agenda. The motion was seconded by Mr. Loppatto and unanimously approved.

***Discussion/ Approval of the Planning Commission Minutes of March 22, 2008***

Mr. Doyle made a motion to approve the minutes dated March 22, 2008. The motion was seconded by Ms. Denault and unanimously approved.

***Announcements/ Comments/ Updates***

**Commercial Design Review Update (McClenny/ Killmer)**

Mr. Killmer reported there was no meeting held during the month of March. There will be a meeting held April 25, 2008 with the owners of Shore Foods.

**Comments/ Updates Regarding the April Town Council Meeting (All)**

Mr. Killmer reported the smoking ordinance was passed to ban smoking around the bandstand, playgrounds, town parks and the beach. Also, the Town Council had a first reading to pass the new ordinance regarding open fires, recreational fires and outdoor cooking. The Town Council recommended minor changes to the ordinance and those changes were made by Mr. Killmer and sent to the Town Administer.

Mr. Killmer also reported equipment was purchased for Town use such as, a machine to clean the beach and an ATV for the lifeguards.

The Memorandum of Understanding between the Town and the Bethany Beach Fire Department was discussed. The Memorandum of Understanding is regarding a long-term contract with the Bethany Beach Volunteer Fire Company for delivery of Ambulance Service to the community.

Update of Planning Commissioners Future Plan Related Projects (All)

Mr. Killmer stated that Ms. Mink provided a document with information regarding the updating of the Comprehensive Development Plan to the Planning Commission members for discussion. The issue will be discussed at the meeting held in May.

Comments, Q&A and Discussion for Planning Commissioner Members

There was no discussion at this time.

#### PUBLIC COMMENT/ QUESTIONS FOR THE PLANNING COMMISSION

There was no discussion at this time.

#### NEW BUSINESS

There was no new business at this time.

#### OLD BUSINESS

Continue Update of Chapter 245 Starting at § 245-81. Article XIII (Exceptions and Modifications) (All)

The Planning Commission members began to review and discuss Chapter 245 starting at 245-81.

### Proposed Changes To Chapter 245 (Zoning) Starting at Article XIII (Exceptions and Modifications) to Article XIX (Conflicts With Other Laws) Changes In Red

§ 245-82. Planned residential development. [Amended 4-15-1983 by Ord. No. 114]

Permission to improve a lot or a plot of ground as a planned residential development shall be by the Planning Commission in accordance with Chapter 200, Subdivision of Land. The planned residential development shall be reviewed under the same procedure as governs a major subdivision. In considering such an application, the Planning Commission shall determine that the following requirements, among others, are met:

- A. The proposed planned residential development shall not include uses not permitted in the zone within which it is located.
- B. No building, structure or **flagpole** shall exceed the height limits for the zone within which it is located.

§ 245-83. Dimensional exceptions.

The following exceptions from the dimensional requirements of this Code shall be permitted:

- A. Chimneys, when necessary to comply with the Building Code, may exceed the permitted building height of this Code, but no more than two feet.
- B. Chimneys and eaves may project in any yard space a maximum of two feet **into the setback**.
- D. Location of heating and/or air-conditioning units. Heat and/or air-conditioning units ~~may~~ **preferably should** be located within a rear yard, provided that no part of the unit(s) be less than seven feet from a side property line or 10 feet from a rear property line. When a dwelling is located on a corner lot, such unit(s) may be located in the side yard, which is abutting the street. Any heating and/or air-conditioning unit already in place as of the effective date of this subsection (January 18, 2002) shall be lawfully nonconforming. [Amended 7-19-1996 by Ord. No. 311; 1-18-2002 by Ord. No. 361]
- F. Securing aboveground fuel tanks. Unless elevated above the design flood elevation and secured as provided in Subsection G hereafter, all aboveground fuel storage tanks (over 50 pounds) shall be securely anchored to the ground by means of vinyl-coated metal cable attached to manufactured home screw anchors placed to a level of not less than four feet below grade in the manner shown on the diagram attached hereto. The metal cable shall be corrosive-resistant and of sufficient gauge and strength, and the anchoring assembly completed, so that if the fuel storage tank is detached from its location due to extreme flooding or wind, it shall remain in place and not become a wind-or water-borne ~~missile~~ **object**. This subsection shall be effective as to all aboveground fuel storage tanks installed after the effective date of this subsection (January 18, 2002); all aboveground fuel storage tanks already in place as of the effective date of this subsection shall be brought into compliance with this subsection not later than January 18, 2003. [Added 1-18-2002 by Ord. No. 361]
- G. Securing fuel tanks in the special flood hazard area (V Zone). In the special flood hazard area (V Zone), aboveground fuel storage tanks shall be elevated above the design flood elevation and secured to the dwelling's supporting structure by corrosive-resistant materials in a manner satisfactory to the Building Inspector's reasonable judgment, to insure that such fuel storage tank shall remain securely in place during any severe wind or flooding event. Below-ground fuel storage tanks shall be anchored by means of vinyl-coated metal cable attached to manufactured home screw anchors placed to a level of not less than four feet below the lowest elevation of the tank. The metal cable shall be corrosive-resistant and of sufficient gauge and strength, and the anchoring assembly completed, so that if the fuel storage tank is unearthed due to extreme flooding or wind, it shall remain in place and not become a wind- or water-borne ~~missile~~ **object**. This subsection shall be effective as to all fuel storage tanks installed in the special flood area after the effective date of this subsection (January 18, 2002); all fuel storage tanks already in place in the special flood area as of the effective date of this subsection shall be brought into compliance with this subsection not later than January 18, 2003. [Added 1-18-2002 by Ord. No. 361]

§ 245-94. Penalties for offenses. [Amended 1-19-1980 by Ord. No. 91; 12-14-1990 by Ord. No. 254; 9-18-1992 by Ord. No. 279]

For any violation of the provisions of this Code, the owner, general agent or contractor of a building or premises where such violations have been committed or shall exist and the lessee or tenant of an entire building or entire premises where such violations have been committed or shall exist and the owner, general agent, contractor, lessee or tenant of any part of a building or premises in which such violation has been committed or shall exist and the general agent, architect, builder, contractor or any other person who commits, takes part in or assists in any such violation or maintains any building or premises in which such violation shall exist, upon conviction thereof, shall be guilty of a violation of this Code and shall be punished by a fine of not more than \$500, plus court costs and Victims Compensation Fund assessment; provided, however, that penalties assessed for any violation of § 245-45, 245-56, 245-63 or 245-72 will not be imposed until 30 days after written notification of such violation is issued or until January 2, 1992, whichever is the latter date. Each day any violation or any provision of this Code occurs or continues to exist shall constitute a separate violation and shall be subject to a separate penalty as above provided. Remove the above portion in italics and place in Chapter 2 of the Town Code

§ 245-96. Revocation of building permits; stop-work orders; appeals. [Added 8-19-1988 by Ord. No. 204]

- A. At any time it appears to the Building Inspector, ~~the Code Enforcement Officer, a Police Officer or the~~ Town Manager that any construction is being undertaken in violation of any provision of this zoning chapter, ~~either~~ may issue a stop-work order or revoke the building permit under which such work is being performed; provided however, that prior to issuance of any stop-work order or revocation of any building permit under this subsection, the Town Building Inspector or Town Manager shall provide the contractor or builder on site with written notice of the alleged zoning chapter violation, which notice shall state specifically the nature of the violation with reference to pertinent sections of the zoning chapter and specify a place and time (not less than ~~twenty four (24)~~ **twenty four (24)** hours and not more than ~~seventy two (72)~~ **seventy two (72)** hours from the delivery of such notice) where the Building Inspector ~~and/or the~~ Town Manager will sit to hear the builder/contractor and/or owner on the issue of whether or not the construction is in violation ~~of any provisions in the zoning chapter~~. The Building Inspector or Town Manager shall promptly attempt to provide the owner of record of such lands with actual notice by ~~telephone, FAX, e-mail, etc. telephonic communication~~ **telephone, FAX, e-mail, etc.** and shall immediately send a copy of such written notice to the owner of record at his address as shown on the Town public records via ~~certified mail~~; but failure of the ~~owner of record~~ **owner** to receive such notice shall not void the hearing so long as the contractor or builder on site received ~~the~~ actual notice. At the hearing, the contractor/builder and/or ~~the~~ owner may appear with or without counsel to be heard on the issue of whether or not construction is in violation ~~of any provisions in the Town Code. the zoning chapter~~. ~~A digital or equivalent tape~~ **A digital or equivalent tape** recording of the hearing shall be made and retained at the Town office ~~for a period of at least ninety (90) days~~. If the person(s) conducting the hearing conclude at the end thereof that construction is proceeding in violation of ~~any provision of the Town's Code zoning chapter~~, he

shall issue a stop-work order or revoke the building permit as appropriate. In such event, no building permit shall be reissued and no stop-work order shall be lifted until the violation has been corrected.

(Formerly §245-100B which is now §245-96B)

- B. Any person whose building permit is revoked or made subject to a stop-work order under § 245-96 may appeal such decision to the Board of Adjustment by filing a written notice of appeal in the Town Office within **seventy (72)** hours of the decision issuing the stop-work order or revoking the building permit. The Town Board of Adjustment shall meet to hear and decide such appeal in a de novo proceeding to be held within **fifteen (15)** days of the date such written appeal is filed. Notice of such Board of Adjustment hearing, stating the date, time, place and nature of the appeal, shall be given as required by § 245-105; provided however, that the time periods for all required forms of notice (posting of public notices, publication of newspaper notice and posting of property) shall be shortened to not less than seven **(7)** days prior to the hearing date.

§ 245-98. Membership; appointment; terms; removal; vacancies. [Amended 10-16-1987 by Ord. No. 195]

- A. The Board of Adjustment of Bethany Beach shall consist of three members, two of whom shall be appointed by the Mayor (and confirmed by the Town Council), each for a term of three years, and the third of whom shall be the presiding officer of the Town's Zoning Commission. Nothing in this chapter shall be deemed to prohibit the Mayor from appointing ~~himself~~ **themselves** as one of the two appointed members of the Board. Members of the Board of Adjustment may be removed for cause by the Town Council upon written charges and after **a** public hearing.

§ 245-103. Powers and duties.

#### C. Variances

- (3) Procedures for requesting a variance. Requests for a variance shall be filed, in writing, with the Building Inspector and shall specify the peculiar physical conditions of the property on which the request is based and the section of this Code requiring a variance. Within 10 **business** days after receiving a request for a variance, the Building Inspector shall send the request, together with all available documentation, including any relevant comments of the Building Inspector, to the members of the Board of Adjustment.

§ 245-104. Appeals from decisions of Board of Adjustment. [Amended 1-19-1980 by Ord. No. 91; 4-15-1983 by Ord. No. 114; 8-19-1988 by Ord. No. 205]

Any person or persons or any board of Bethany Beach aggrieved by any decision of the Board of Adjustment may present to the Superior Court a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the written decision of the Board of Adjustment in the Town Office. **Filing of the written decision shall be announced at the next regularly scheduled meeting of the Town Council, and the date for the filing will be the date of that Town Council meeting. (Requested to be added by Mr. Parsons).**

§ 245-105. Public notice requirements. [Amended 1-15-1988 by Ord. No. 197; 8-15-1997 by Ord. No. 315]

Public notice of appeals and applications to the Board of Adjustment is required as provided in this section.

A. Notice by posting.

- (1) The Town Manager shall cause to be posted at two or more prominent and easily visible places on the property, on 18 inch by 24 inch ~~yellow~~ cardboard **placard**, a public notice setting forth the date and place at which the Board of Adjustment has scheduled a hearing on the appeal or application; the name of the appellant or applicant; a description and size of the property involved; and a statement, in plain language, of the matter involved. The notice shall also state that, at the hearing, parties and interested persons may appear in person or by agent or attorney. It shall be the responsibility of the appellant or applicant to maintain the notices in good condition during the posting period.

- D. Time of notice. Notices by mail shall be placed in the mail at least 30 days before the hearing date. At least one notice by publication shall be published at least 30 days before the hearing date. Notice shall be posted on the property at least 30 days ~~before~~ **after** the hearing date and shall remain until the day ~~before~~ **after** the hearing date. Notice shall be posted in five public places in the Town at least 30 days before the hearing date and shall remain until the day before the hearing date.

§ 245-109. Schedule to be established; payment.

- A. The ~~Board of Commissioners~~ **Town Council** shall establish a schedule of fees, charges and expenses and a collection procedure for building permits, certificates of occupancy, appeals and other matters pertaining to this Code. The schedule of fees shall be recorded in the Town Hall and may be altered or amended only by the ~~Board of Commissioners~~ **Town Council**.

Respectfully Submitted,

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Seville Pettit  
Administrative Secretary

PLANNING COMMISSION  
ACTION ITEMS  
APRIL 19, 2008

1. Mr. Killmer to provide changes to Chapter 245 to the Planning Commission members.
2. Planning Commission members to provide comments to Mr. Killmer concerning the Certificate of Occupancy document.
3. Mr. Eckrich to check if Chapter 245-94 has been relocated to Chapter 2.

